



## *Local Programs Procedures*

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### **LPP 05-02    Manual Update**

#### **Subject:        Technical Changes**

Reference:        *Local Assistance Procedures Manual* (LAPM), Chapter 9, “Civil Rights and Disadvantaged Business Enterprises,” Chapter 16, “Administer Construction Contracts,” and *Local Assistance Program Guidelines* (LAPG), Chapter 12, “Other Federal Programs”.

Effective Date: August 17, 2005

Approved: \_\_\_\_\_

**Original Signed By**

TERRY L. ABBOTT, Chief  
Division of Local Assistance

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### **WHAT IS AN LPP**

LPPs are Local Programs Procedures. These documents are used for the rapid deployment of new procedures and policies between updates of Local Assistance manuals, guidelines and programs. They are numbered according to calendar year and order in which released. This is the 2<sup>nd</sup> LPP issued in 2005, hence; it is LPP 05-02.

### **PURPOSE**

The purpose of this LPP is to make technical corrections to previously issued LPP 04-05 for LAPM Chapter 9, “Civil Rights and Disadvantaged Business Enterprises,” LPP 04-07 for Chapter 16, Administer Construction Contracts,” and LPP 04-04 for LAPG Chapter 12 “Other Federal Programs”.



### **USER-FRIENDLY FEATURES**

- These new procedures are incorporated in the electronic version of the *Local Assistance Procedures Manual* (LAPM) that are available at the Division of Local Assistance Home page on the Internet at: <http://www.dot.ca.gov/hq/LocalPrograms/>.

*Manual*", or "*Local Assistance Program Guidelines*". You may also purchase a Compact Disc (CD), which acts as a one-stop shop for useful publications, and promotes flexible access to helpful information for local project delivery.

- This LPP releases only certain pages that have been corrected. The affected pages of the LAPM, Chapters 9,16 and LAPG, Chapter 12 are included in this LPP are indicated with sidebars and can be easily inserted into existing hard copies of the LAPM and LAPG.
- To receive an electronic notification when new information is posted on the DLA website, please subscribe to the DLA list server at:  
<http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>
- Comments and suggestions for improvement to the manual or the processes and procedures are welcome. They may be submitted to:

Department of Transportation  
Division of Local Assistance, MS 1  
Attention: **Cathy Felkins**  
P.O. Box 942874  
Sacramento, CA 94274-0001  
FAX (916) 654-2409  
E-mail: [Cathy.Felkins@dot.ca.gov](mailto:Cathy.Felkins@dot.ca.gov)

### **SUMMARY OF CHANGES**

<b>LAPM Item</b>	<b>Change</b>
<b>Chapter 9 Section 9.4, (Local Agency DBE Programs) page 9-9, 9a</b>	Under subheading " <i>Prompt Progress Payment to Subcontractors</i> ," corrected the " <i>Section 7801.5</i> " mentioned to "... <i>7108.5 of the California Business and Professions Code</i> ....."  The fifth paragraph under subheading " <i>Prompt Payment of Withheld Funds to Subcontractors</i> ," corrected the " <i>Section 7801.5</i> " mentioned to "... <i>7108.5 of the California Business and Professions Code</i> ....."
<b>Chapter 16 Section 16.12, (Equal Employment Opportunity), page 16-17</b>	Deleted the third paragraph, as DLAEs do not interface with local agency contractors.

<b>Con't</b> <b>Section 16.13,</b> <b>(Contract Change</b> <b>Orders) page 16-18</b>	Under first paragraph reference to “ <i>Chapter 4</i> ” was corrected to “ <i>Chapter 3</i> ”.
<b>LAPG Item</b>	<b>Change</b>
<b>Chapter 12.6</b> <b>(Intelligent</b> <b>Transportation</b> <b>Systems) page 12-31</b>	Corrected spelling of “ <i>Figure 12-4 Systems Engineering Methodology</i> ”, which was incorrectly spelled.

**REFERENCES**

- 49 Code of Federal Regulations (CFR), 26.29
- California Business and Professions Code, Section 7108.5
- 23 CFR 940, National ITS Architecture

Each local agency will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its DOT-assisted contracts (one way is to include the policy statement in each contract solicitation).

#### **DBE LIAISON OFFICER**

Each local agency must designate a DBE liaison officer who shall have direct independent access to the local agency's Chief Executive Officer concerning DBE program matters. This person shall be responsible for the duties as described in Exhibit 9-A.

#### **BIDDERS LIST**

Each local agency will be required to create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote to the local agency on DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, date established, and annual gross receipts of firms.

A local agency may include in its bidding process a clause requiring prime bidders to report the names/addresses, and other pertinent information, of all firms who quote to them on subcontracts as a way to establish their bidders list. Also, a survey of consulting firms and contractors that were awarded DOT-assisted contracts in the past may be used to obtain bidders list data.

#### **CONTRACT PROVISIONS**

##### **Contract Assurance**

DBE regulations require the following contract assurance statement in every DOT-assisted contract and subcontract:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate."

##### **Prompt Progress Payment to Subcontractors**

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than 10 days of receipt of each progress payment, unless otherwise, agreed to in writing. In addition, federal regulation (49 CFR 26.29) requires a prime contractor or subcontractor to pay a subcontractor no later than 30 days of receipt of each payment unless, any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of the agency. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. These requirements apply to both DBE and non-DBE subcontractors.

### **Prompt Payment of Withheld Funds to Subcontractors**

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor:

1. The local agency may decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
2. The local agency may decline to hold retainage from prime contractors and include a contract clause obligating the prime contractor, and subcontractors to make prompt and full payment of any retainage kept by the prime contractor or subcontractor to all subcontractors within 30 days after the subcontractor's work is satisfactorily completed.
3. The local agency may hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances, and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to all subcontractors for satisfactory completion of the accepted work within 30 days after receipt of the retainage. This clause must require the prompt release of retainage payments from the prime contractor to the subcontractor within a specified number of days after the subcontractor's work is satisfactorily completed.

In the above methods, a subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by the agency. When an agency has made an incremental acceptance of a portion of the contract work, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. Federal regulation (49 CFR 26.29) also requires that any delay or postponement of payment among the parties may take place only for good cause, must have the prior written approval of the agency, and that appropriate means of enforcement such as those contained in Section 7108.5 of the California Business and Professions Code, must be included in the contract.

- Applying necessary sanctions against the prime contractor for failure to submit payrolls or noncompliance with the labor standard requirements. Sanctions must be in conformance with current Department of Transportation policy as described in the *Construction Manual, Chapter IX, Section 9-01, "Labor Compliance."*
- Reporting any apparent violation of state or federal labor requirements to the Caltrans District Labor Compliance Officer immediately upon discovery. In the case of local agency contracts that are 100 percent federally funded, violations should also be reported to the US Department of Labor, a listing of their office addresses is shown in Exhibit 16-Q. This information shall be maintained by the District Labor Compliance Officer and is to be forwarded on form FHWA-1494 semi-annually, to the Caltrans Headquarters Construction Office. Caltrans Headquarters Construction is responsible for summarizing the information statewide and submitting it to FHWA. The local agencies may contact the District Labor Compliance Officer for advice, training, and assistance as needed, or the following for labor compliance cases at the California Department of Industrial Relations, Division of Labor Standards Enforcement

**Southern California**

Public Works Contracts  
Division Of Labor Standards Enforcement  
6150 Van Nuys Blvd., Rm. 100  
Van Nuys, Ca 91401  
(818) 901-5538

**Northern California**

Public Works Contracts  
Division of Labor Standards Enforcement  
2424 Arden Way, Rm. 340  
Sacramento, Ca 95825  
(916) 263-2842

## 16.12 EQUAL EMPLOYMENT OPPORTUNITY

### INTRODUCTION

Equal Employment Opportunity (EEO) requirements apply to all federal-aid construction contracts and all related subcontracts of \$10,000 or more. The Contractor is subject to the U.S. Department of Transportation EEO and nondiscrimination requirements pursuant to 23 USC 140 and its implementing regulations. In addition, the contractor is subject to the U.S. Department of Labor's federal-aid contract requirements that include women and minority recruitment goals and the adherence to specific EEO and affirmative action standards pursuant to 41 CFR, Chapter 60 (see FHWA Form 1273, Exhibit 12-E, Chapter 12).

### PROCEDURES

A proactive approach to ensure compliance is to discuss the requirements of the contract at the pre-construction conference. The EEO responsibilities specifically listed in the "Required Contract Provisions, Federal-aid Construction Contracts (Form 1273)" are broad and inclusive, requiring specific actions regarding all aspects of employment including but not limited to recruitment, hiring, upgrading, promotion, transfer, overtime, demotion, layoff, termination, training, working with the union, addressing discrimination complaints, and dissemination of EEO policy.

## RECORDKEEPING

The administering agency must document contractor's compliance with the EEO requirements according to the FHWA Form 1273, Exhibit 12-E, Chapter 12 and maintain the record for three years.

## COMPLIANCE REVIEWS

If the local agency's federal-aid project is selected by the Department to be reviewed, the administering agency shall conduct a formal compliance review of the prime and subcontractors during the peak employment period of contract. The formal compliance review shall consist of a desk audit and an on-site review that examines the contractor's personnel policies, EEO practices, workforce composition (i.e., job classification, race, gender) and documentation of the contractor's efforts to recruit women and minorities in all aspects of employment. An EEO Contractor Compliance Review model based on 23 CFR Part 230, Subparts A and D shall be used by the administering agency and may be found online at: <http://www.dot.ca.gov/hq/LocalPrograms/>

## REPORTING

The FHWA Form PR-1391, (see sample: Exhibit 16-O, "Federal-aid Highway Construction Contractors Annual EEO Report", Chapter 16) is prepared by the prime contractor and by each subcontractor if the federal-aid construction contract work exceeds \$10,000. The reporting period is only for federal-aid construction contracts that are active during the last pay period in July. If the contract is completed prior to the last pay period in July, or the construction contract does not begin until August, then no PR-1391 report needs to be filed. The report form must be downloaded from the Caltrans Division of Local Assistance website at:

[http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html#EEO](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#EEO)

It is the responsibility of the administering agency to ensure that the prime and subcontractors complete the form accurately and timely. The administering agency must review, countersign and submit the PR-1391 to the DLAE by August 25 of each year. Failure to submit the report form timely may result in sanction and/or a process review. The DLAE compiles and forwards the reports to the Division of Local Assistance Civil Rights Coordinator no later than August 30.

Exhibit 16-X "Report Compliance Review Determination for Federal-aid Contractor or Subcontractor," form is prepared by the administering agency immediately after the EEO Contractor Compliance Review. The report should be sent to the DLAE who will forward the report to the Division of Local Assistance Civil Rights Coordinator for compilation and annual reporting to the FHWA.

**U.S. Department of Labor (DOL), Executive Order 11246** - Only the DOL has the authority to determine compliance with EO 11246 and its implementing regulations. Local agencies do not have independent authority to determine compliance with EO 11246, 41 CFR, Chapter 60, or the minority and female goals established by the Office of Federal Contract Compliance Programs, (OFCCP). If the administering agency becomes aware of any possible violations of EO 11246 or 41 CFR, Chapter 60, the administering agency has the authority and responsibility to notify the OFCCP. For contact information, see Exhibit 16-Q, "U.S. Department of Labor, Office of Federal Contract Compliance Programs (Offices Within California)"Chapter 16.

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## 16.13 CONTRACT CHANGE ORDERS

### PROCEDURES

Any change of the approved plans or specifications or work required which was not included in the contract must be covered by a contract change order. All change orders are to be approved by the administering agency in advance of any work being done on the change. **CAUTION: Additional** federal funds required for change orders may be jeopardized if work is done before authorization is received from Caltrans (see Chapter 3, “Project Authorization” of this manual for more information on project authorization). To receive authorization for additional federal funds the administering agency shall submit the following to the DLAE:

- A letter explaining the change order
- A revised detailed estimate
- Written approval for additional federal funds for the change order from the RTPA/MPO

Approval must be received in writing for the additional federal funds from the DLAE before the change order is approved by the administering agency. All information regarding approved change orders shall be retained in the project construction records.

## SYSTEMS ENGINEERING

Systems Engineering is required for all federal-aid ITS projects per 23 CFR 940, regardless of size or complexity. However, the amount of Systems Engineering should be commensurate with the project scope and complexity.

Systems Engineering is a way of thinking about developing and completing a project. It is a process, not a checklist. The figure below shows the Systems Engineering process. The process covers the entire life cycle of a project, from planning (concept of operations, stakeholder and user needs identification) to design, operations and maintenance. The process transforms user needs into system requirements and then into a system design. As a result Systems Engineering ensures a successful and long-lasting system by (1) reducing long-term system costs, (2) reducing risk, (3) satisfying user's needs, and (4) improving system quality.

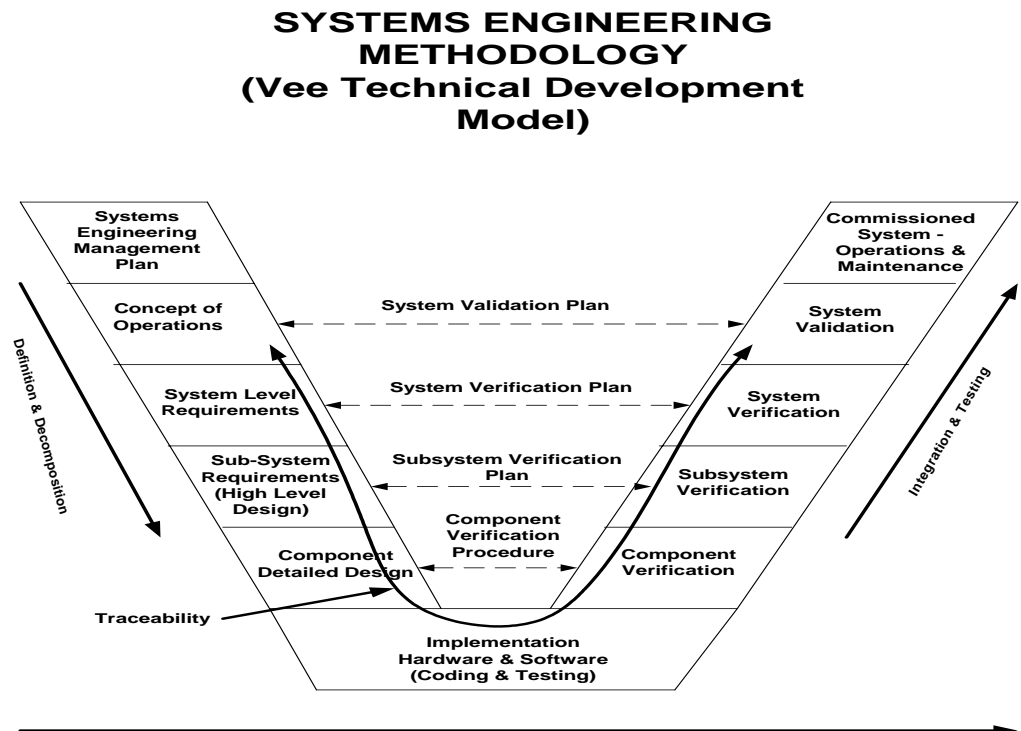
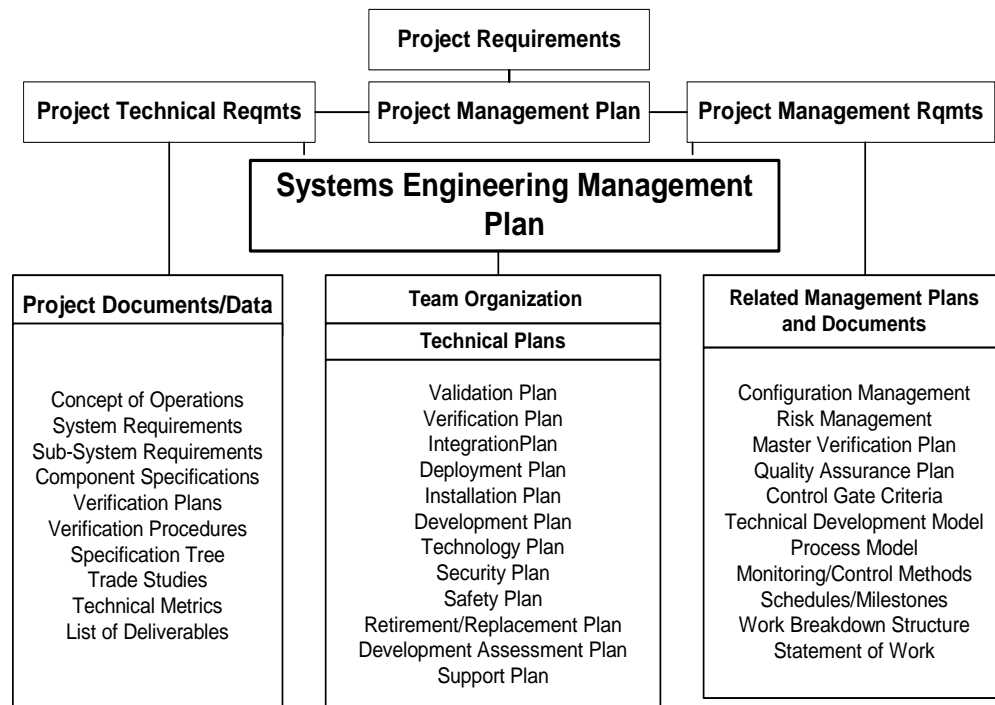


Figure 12-4 Systems Engineering Methodology

Systems Engineering is an iterative process of technical management, system design, acquisition, product realization, and technical evaluation. Similarities exist between the Systems Engineering process as used for ITS project and the structured Caltrans Project Study Report (PSR) process. Systems Engineering transforms user needs and/or operational requirements into system scope and design, whereas the PSR process transforms highway needs into project scope and design.

Systems Engineering spans the entire life cycle from systems analysis, requirements definition and conceptual design at the outset of a development through integration, testing, and operational support, to ultimately planning for replacement, and eventual retirement and disposal at the end of a program. In accordance with the 23 CFR 940, the Systems Engineering process will address at a minimum for all ITS projects the following:

- Identification of portions of the RA being implemented or if a RA does not exist, the applicable portions of the National ITS Architecture.
- Identification of participating agencies and their roles and responsibilities.
- Requirements definitions.
- Analysis of alternative system configurations and technology options to meet requirements.
- Procurement options.
- Identification of applicable ITS standards and testing procedures.
- Procedures and resources necessary for operation and management of the system



**Figure 12-5 Relationship of Systems Engineering Management Plan with Project Requirements**